

property is not the principal residence of at least one other mortgagor; or

(iii) An obligation of the mortgagor under the mortgage is not performed.

(d) *Second mortgage to Secretary.* Unless otherwise provided by the Secretary, a second mortgage to secure any payments by the Secretary as provided in § 206.121(c) must be given to the Secretary before a Mortgage Insurance Certificate is issued for the mortgage.

(Approved by the Office of Management and Budget under control number 2528-0133)

[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989, as amended at 60 FR 42760, Aug. 16, 1995; 61 FR 49033, Sept. 17, 1996]

#### § 206.29 Initial disbursement of mortgage proceeds.

Mortgage proceeds may not be disbursed at the initial disbursement or after closing (upon expiration of the 3-day rescission period under 12 CFR part 226, if applicable) except:

(a) Disbursements to the mortgagor, a relative or legal representative of the mortgagor, or a trustee for benefit of the mortgagor;

(b) Disbursements for the initial MIP under § 206.105(a);

(c) Fees that the mortgagee is authorized to collect under § 206.31;

(d) Amounts required to discharge any existing liens on the property;

(e) An annuity premium, if the premium was disclosed as part of the total cost of the mortgage under the disclosures required by 12 CFR part 226; and

(f) Funds required to pay contractors who performed repairs as a condition of closing, in accordance with standard FHA requirements for repairs required by appraisers.

[64 FR 2987, Jan. 19, 1999]

#### § 206.31 Allowable charges and fees.

(a) *Fees at closing.* The mortgagee may collect, either in cash at the time of closing or through an initial payment under the mortgage, the following charges and fees incurred in connection with the origination of the mortgage loan:

(1) A charge to compensate the mortgagee for expenses incurred in originating and closing the mortgage loan: *Provided*, that the Secretary may es-

tablish limitations on the amount of any such charge which can be included in the mortgage loan.

(2) Reasonable and customary amounts, but not more than the amount actually paid by the mortgagee, for any of the following items:

(i) Recording fees and recording taxes, or other charges incident to the recordation of the insured mortgage;

(ii) Credit report;

(iii) Survey, if required by the mortgagee or the mortgagor;

(iv) Title examination;

(v) Mortgagee's title insurance;

(vi) Fees paid to an appraiser for the initial appraisal of the property; and

(vii) Such other charges as may be authorized by the Secretary.

(b) *Repair administration fee.* If the property requires repairs after closing in order to meet HUD requirements, the mortgagee may collect a fee as compensation for administrative duties relating to repair work pursuant to § 206.47(c), not to exceed the greater of one and one-half percent of the amount advanced for the repairs or fifty dollars. The mortgagee shall collect the repair fee by adding it to the mortgage balance.

[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989]

#### § 206.32 No outstanding unpaid obligations.

In order for a mortgage to be eligible under this part, a mortgagor must establish to the satisfaction of the mortgagee that:

(a) After the initial payment of loan proceeds under § 206.25(a), there will be no outstanding or unpaid obligations incurred by the mortgagor in connection with the mortgage transaction, except for repairs to the property required under § 206.47 and mortgage servicing charges permitted under § 206.207(b); and

(b) The initial payment will not be used for any payment to or on behalf of an estate planning service firm.

[64 FR 2988, Jan. 19, 1999]

#### ELIGIBLE MORTGAGORS

#### § 206.33 Age of mortgagor.

The youngest mortgagor shall be 62 years of age or older at the time the

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mortgagee submits the application for insurance.

[61 FR 49033, Sept. 17, 1996]

### § 206.35 Title held by mortgagor.

The mortgagor shall hold title to the entire property which is the security for the mortgage. If there are multiple mortgagors, all the mortgagors must collectively hold title to the entire property which is the security for the mortgage. If one or more mortgagors hold a life estate in the property, for purposes of this section only the term "mortgagor" shall include each holder of a future interest in the property (remainder or reversion) who has executed the mortgage.

[54 FR 24833, June 9, 1989, as amended at 61 FR 49033, Sept. 17, 1996]

### § 206.37 Credit standing.

Each mortgagor must have a general credit standing satisfactory to the Secretary.

### § 206.39 Principal residence.

The property must be the principal residence of each mortgagor at closing. For purposes of this section, the property will be considered to be the principal residence of any mortgagor who is temporarily or permanently in a health care institution as long as the property is the principal residence of at least one other mortgagor who is not in a health care institution.

### § 206.40 Disclosure and verification of Social Security and Employer Identification Numbers.

The mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

[60 FR 42760, Aug. 16, 1995]

### § 206.41 Counseling.

(a) *List provided.* At the time of the initial contact with the prospective mortgagor, the mortgagee shall give the mortgagor a list of the names and addresses of housing counseling agencies which have been approved by the Secretary as responsible and able to provide the information described in

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paragraph (b) of this section. The mortgagor must receive counseling.

(b) *Information to be provided.* A counselor must discuss with the mortgagor:

(1) The information required by section 255(f) of the National Housing Act;

(2) Whether the mortgagor has signed a contract or agreement with an estate planning service firm that requires, or purports to require, the mortgagor to pay a fee on or after closing that may exceed amounts permitted by the Secretary or this part; and

(3) If such a contract has been signed under § 206.41(b)(2), the extent to which services under the contract may not be needed or may be available at nominal or no cost from other sources, including the mortgagee.

(c) *Certificate.* The counselor will provide the mortgagor with a certificate stating that the mortgagor has received counseling. The mortgagor shall provide the mortgagee with a copy of the certificate.

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[54 FR 24833, June 9, 1989, as amended at 61 FR 49033, Sept. 17, 1996; 64 FR 2988, Jan. 19, 1999]

### § 206.43 Information to mortgagor.

(a) *Disclosure of costs of obtaining mortgage.* The mortgagee must ensure that the mortgagor has received full disclosure of all costs of obtaining the mortgage. The mortgagee must ask the mortgagor about any costs or other obligations that the mortgagor has incurred to obtain the mortgage, as defined by the Secretary, in addition to providing the Good Faith Estimate required by § 3500.7 of this title. The mortgagee must clearly state to the mortgagor which charges are required to obtain the mortgage and which are not required to obtain the mortgage.

(b) *Lump sum disbursement.* (1) If the mortgagor requests that at least 25% of the principal limit amount (after deducting amounts excluded in the following sentence) be disbursed at closing to the mortgagor (or as otherwise permitted by § 206.29), the mortgagee must make sufficient inquiry at closing to confirm that the mortgagor will not use any part of the amount disbursed for payments to or on behalf of an estate planning service firm, with